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To:	Examiner Cheryl Ann Juska Group Art Unit: 1771	**From:**	Daniel R. Alexander for Robert M. Lanning Reg. No. 57,121
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Phone:		**Phone:**	(864) 503-1537
Subject:	Application Serial No.: 10/706,807 Filed: November 12, 2003 Applicant: Mark Kiff Title: Sculptured And Etched Textile Having Shade Contrast Corresponding to Surface Etched Regions Attorney Docket: 5610	**Date:**	May 22, 2006
Copies:		**Pages:**	8 (including cover)

Comments:

Notice of Appeal Transmittal Sheet– 1 page

Notice of Appeal – 2 pages

Pre-Appeal Brief Request for Review with Appendix – 4 pages

PATENT

In re Application of: Mark Kiff
Application No.: 10/706,807
Filed: November 12, 2003
For: SCULPTURED AND ETCHED TEXTILE HAVING SHADE CONTRAST CORRESPONDING TO SURFACE ETCHED REGIONS

Attorney Docket No. 5610
Date: May 22, 2006

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences in the above-identified application.

☒ Applicant hereby petitions for an extension of time for the period noted below, as well as for any additional time period necessary to render the present submission timely. Please charge the appropriate petition fee to Deposit Account No. 04-0500.

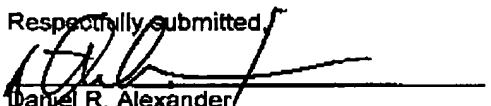
☐ Other:

☒ Please charge Deposit Account No. 04-0500 in the total amount indicated below. A duplicate copy of this transmittal sheet is enclosed herewith (if submitted via first class mail or as "Express Mail Post Office to Addressee").

TIME EXTENSION PETITION FEE		three (3) month	$1,020.00
	subtract time extension fee previously paid	three (3) month	($1,020.00)
NOTICE OF APPEAL FEE			$500.00
TOTAL AMOUNT TO BE CHARGED TO DEPOSIT ACCOUNT		TOTAL	$500.00

☒ The Commissioner is hereby authorized to charge any deficiencies in the fees associated with this communication or credit any overpayment to Deposit Account No. 04-0500.
- ☒ Any filing fees under 37 CFR 1.16 for the presentation of extra claims.
- ☒ Any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,



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Certificate of Transmission by Facsimile Under 37 CFR §1.8

I hereby certify that this correspondence, along with all documents referred to as being enclosed herewith, is being transmitted by facsimile to the U.S. Patent and Trademark Office on May 22, 2006, at the facsimile number listed below.

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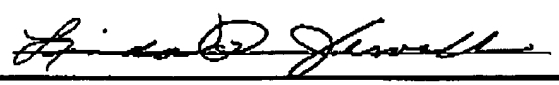
Name: Linda P. Jewell Signature: 

PRE-APPEAL BRIEF REQUEST FOR REVIEW		
	Application Number	10/706,807
	Filing Date	November 12, 2003
	First Named Inventor	Mark Kiff
	Art Unit	1771
	Examiner Name	Juska, Cheryl Ann
	Attorney Docket Number	5610

Applicant hereby requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being concurrently filed with a "Notice of Appeal from the Examiner to the Board of Patent Appeal and Interferences" and the fee specified 37 CFR 41.20(b)(1).

The review of the final rejection is requested for the reason(s) set forth in the attached Appendix.

Note: No more than five (5) pages may be submitted.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒ attorney or agent of record

Registration Number 32,604

☐ attorney or agent acting under 37 CFR 1.34

Registration Number _____

Signature

Daniel R. Alexander

Typed or printed name

(864) 503-1372

Telephone number

May 22, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

☐ *Total of _____ forms are submitted.

Certificate of Transmission by Facsimile Under 37 CFR §1.8

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Facsimile Number: (571) 273-8300

Name: Linda P. Tidwell Signature:

In re Application of Mark Kiff
Application No. 10/706,897

APPENDIX

Applicant respectfully submits that the Section 102 and 103 rejections of claims 14-17 and 19-21 over U.S. Patent No. 6,494,925 (Child et al.) (hereinafter "the Child '925 patent") and/or U.S. Patent No. 4,353,706 (Burns, Jr. et al.) (hereinafter "the Burns '706 patent") are improper for the reasons set forth below.

With respect to the Section 102 rejection over the Child '925 patent, the Office Action asserts that Example 2 of the Child '925 patent discloses the method recited in pending claim 14. However, Applicant notes that the description of Example 2 set forth in the Child '925 patent states that "the carpet was dyed with a solid shade applicator ... before the application of the fiber degrading composition and the print pastes" (the Child '925 patent at col. 9, lines 44-47). As would be understood by those of ordinary skill in the art, the "dyed" carpet referred to in this example would have had the dye(s) applied and fixed thereto to produce the "dyed" carpet. Accordingly, Applicants respectfully submit that Example 2 does not disclose a method in which an unfixed dye is introduced into the yarns, the fabric is then etched with a yarn-degrading composition, and the dye is then fixed. Thus, the pending claims cannot properly be considered anticipated by the Child '925 patent.

Furthermore, as previously noted by Applicant, the Office Action fails to identify any teaching or suggestion which would have motivated one of ordinary skill in the art to modify the method disclosed in the Child '925 patent in such a way as to arrive at the method recited in the pending claims. In particular, Applicant submits that the Office Action has failed to identify any teaching or suggestion that would have motivated one of ordinary skill in the art to modify the sequence of applying the dye and fiber degrading composition disclosed in the Child '925 patent in such a way as to arrive at the method recited in the pending claims. Therefore, the subject matter of the pending claims cannot properly be considered obvious over the Child '925 patent alone.

As for the Burns '706 patent, the Office Action acknowledges that the reference fails to disclose the particular method recited in the pending claims, but asserts that it would have been obvious to one of ordinary skill in the art to apply the dye either before or after the fiber degrading composition is applied. In support of this assertion, the Office Action states that the "motivation to do so would be to produce various aesthetic effects and/or to avoid mixing of the components" (the

"Office Action" dated November 21, 2005 at page 3). However, as for the first proffered motivation, Applicant respectfully submits that the Burns '706 patent does not suggest that such aesthetic effects would result from varying the order in which the dye and fiber degrading composition are applied, and the Office Action does not identify any other source for such teaching. Therefore, it would appear that this supposed motivation could only be arrived at after a hindsight reconstruction of the claimed invention using Applicant's disclosure as a blueprint for selecting and selectively modifying the identified prior art.

As for the second proffered motivation, Applicant notes that the Burns '706 patent teaches that the dye and fiber degrading composition are applied together "so that the color appears in perfect register where the fiber degrading composition has been selectively applied" (see, e.g., the Burns '706 patent at col. 6, lines 25-29). So, this alleged motivation identified in the Office Action is in direct conflict with the express teachings of the Burns '706 patent because the separate application of the dye and fiber degrading composition could hinder the desired registering of the dyed and degraded areas of the fabric. Accordingly, Applicant submits that the invention defined by the pending claims cannot properly be considered prima facie obvious over the Burns '706 patent.

Finally, Applicant submits that the subject matter recited in the pending claims cannot properly be considered obvious over the combination of the Child '925 and the Burns '706 patents. As noted above, the Office Action fails to identify any teaching or suggestion which would have motivated one of ordinary skill in the art to modify the sequence of applying the dye and fiber degrading composition disclosed in the Child '925 patent in such a way as to arrive at the method recited in the pending claims. The Office Actions also fails to properly identify any teaching or suggestion which would have motivated one of ordinary skill in the art to modify the method disclosed in the Burns '706 patent in such a way as to arrive at the method recited in the pending claims. Therefore, both references fail to teach or suggest the particular method or sequence of steps recited in the pending claims. In view of this fact, the combination of the Child '925 and the Burns '706 patents must also fail to teach or suggest the method recited in the pending claims. Therefore, Applicant respectfully submits that the subject matter recited in the pending claims cannot properly be considered prima facie obvious over the combination of the Child '925 and the Burns '706 patents.

The section 102 and 103 rejections over the Child '925 and the Burns '706 patents, therefore, should be withdrawn.